

REMARKS

Applicants submit this Response to Restriction Requirement in reply to the Office Action mailed January 3, 2006.

Page 2 of the Office Action required election of one of the following allegedly distinct inventions for prosecution:

- I. Claims 1-18, characterized as being drawn to a bracket;
- II. Claims 19-30 and 65, characterized as being drawn to a deck;
- III. Claims 31-38, characterized as being drawn to a tool;
- IV. Claims 39-59, characterized as being drawn to a method; and
- V. Claims 60-64, characterized as being drawn to a railing.

As a preliminary matter, Applicants note that a Preliminary Amendment was filed on December 28, 2005 which added claims 66-79 to this application. Accordingly, claims 1-79 were pending in this application prior to the mailing date of the Office Action.

Furthermore, a Supplemental Preliminary Amendment was filed on January 17, 2006, which added claims 80-104, after the issuance of the Office Action mailed January 3, 2006, by an apparently inadvertent crossing of the Supplemental Preliminary Amendment and the Office Action in the mail. Accordingly, claims 1-104 are currently pending in this application. Should the Examiner deem the Supplemental Preliminary Amendment as being non-responsive to the Office Action, Applicants request that this Response to Restriction Requirement also be treated as an amendment adding claims 80-104. The additional claims fee payment of \$1,450.00 has already been acknowledged as having been received with the Supplemental Preliminary Amendment filed January 17, 2006.

In any event, in view of pending claims 1-104, Applicants believe that the Office Action would have issued a restriction requirement requiring election to one of the following allegedly distinct inventions for prosecution:

- I. Claims 1-18 and 66-72 allegedly drawn to a bracket;
- II. Claims 19-30, 65, and 73-79 allegedly drawn to a deck;
- III. Claims 31-38, allegedly drawn to a tool;
- IV. Claims 39-59, allegedly drawn to a method;
- V. Claims 60-64, allegedly drawn to a railing; and
- VI. Claims 80-104, allegedly drawn to a railing assembly.

Without subscribing to any of the assertions or conclusions set forth in the Office Action, Applicants elect Invention VI, claims 80-104 with traverse. Should the Examiner refuse to acknowledge the Preliminary Amendment filed December 28, 2005 or Supplemental Preliminary Amendment filed January 17, 2006, Applicants elect Invention I, claims 1-18, with traverse. Applicants believe that Inventions I, II, and VI should be examined together. The Office Action cited M.P.E.P. § 806.05(c) as allegedly supporting the separation of Inventions I and II, however, one of the requirements for issuing a restriction under that section is that the “combination *as claimed* does not set forth the details of the subcombination *as separately claimed*.” Such is not the case here. Both independent claim 19 in Invention II and independent claim 80 in Invention VI substantially recite every aspect of independent claim 1 in Invention I. As set forth in M.P.E.P. § 806.05(c)(I),

[w]here a combination *as claimed* sets forth the details of the subcombination *as separately claimed*, there is no evidence that combination AB_{sp} is patentable without the details of B_{sp}. The inventions

are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility.

As the above referenced portion of the M.P.E.P is applicable to Inventions I, II, and VI, Applicants respectfully request that they be examined together.

The Office Action contains characterizations of the claims with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the claims in this Response, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

If there is any fee due in connection with the filing of this Response, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: February 3, 2006

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